

**Deposition Designations for:
STUART CANNON
August 23,1999**

Deposition Designation Key

**Arrowood = Arrowood Indem. Co.
f/k/a Royal Indem. Co. (Light Green)**

BNSF = BNSF Railway Co. (Pink)

Certain Plan Objectors “CPO” = Government Employees Insurance Co.; Republic Insurance Co. n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance Co.; Fireman’s Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurta; and Allianz SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal Belge SA (Orange)

CNA = Continental Cas. Co & Continental Ins. Co. (Red)

**FFIC = Fireman Funds Ins. Co. (Green)
FFIC SC = Fireman Funds Ins. Co. “Surety Claims” (Green)**

GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.

Libby = Libby Claimants (Black)

OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)

PP = Plan Proponents (Blue)

Montana = State of Montana (Magenta)

Travelers = Travelers Cas. and Surety Cos. (Purple)

UCC & BLG = Unsecured Creditors’ Committee & Bank Lenders Group (Lavender)

**AFNE = Assume Fact Not in
Evidence**

AO = Attorney Objection

BE = Best Evidence

Cum. = Cumulative

Ctr = Counter Designation

Ctr-Ctr = Counter-Counter

ET = Expert Testimony

F = Foundation

408 = Violation of FRE 408

H = Hearsay

IH - Incomplete Hypothetical

L = Leading

LA = Legal Argument

LC = Legal Conclusion

LPK - Lacks Personal Knowledge

LO = Seeking Legal Opinion

NT = Not Testimony

Obj: = Objection

R = Relevance

S = Speculative

UP = Unfairly Prejudicial under Rule 403

V = Vague

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1 MONTANA NINETEENTH JUDICIAL DISTRICT COURT
2 LINCOLN COUNTY
3

4 Cause No. DV-96-11

5 STUART and JUDY CANNON,)
6 husband and wife,)
7 Plaintiffs,)

8 -vs-)

9 W.R. GRACE & CO.-Conn, a)
10 Connecticut corporation,)
11 and DOES I-IV,)
12 Defendants.)

13 DEPOSITION OF
14 STUART CANNON
15 (On Behalf of Defendants.)
16
17
18
19
20

21 Offices of McGarvey, Heberling, Sullivan & McGarvey
22 745 South Main Street
23 Kalispell, Montana
24 Monday, August 23, 1999 -- 9:00 a.m.

25 Reported by Beth Gilman, RPR and Notary Public for
the State of Montana, County of Flathead

HEDMAN, ASA & GILMAN REPORTING - 752-5751/752-3334
P. O. BOX 394 -- KALISPELL, MONTANA

1 primarily, and maybe he could shed some light on
2 it. Like I say though, he wasn't there so they just
3 sent me to this other fellow.

4 Q. Other than getting logs dropped on you and
5 things like -- things that are traumatic injuries,
6 have you lost any time from work in the last two or
7 three years from any other cause?

8 A. The only time I've lost any work is having
9 to go to these doctors and these meetings like this
10 and stuff like that. No.

Libby 11 Q. Now, you worked up at Zonolite as a -- in
12 different positions. I think I have a list of those
13 here. Maybe I don't. My recollection is that you
14 first worked as a sweeper.

15 A. Yes, that's right.

16 Q. In the dry mill.

17 A. Yeah.

18 Q. I'll bet I have one here someplace.

19 MR. GRAHAM: Is it in one of the
20 Exhibits, Roger?

21 MR. SULLIVAN: It's an exhibit, Gary,
22 yes, and it's --

23 MR. GRAHAM: 508, I bet.

24 MR. SULLIVAN: 508.

25 BY MR. GRAHAM:

Libby

- 1 Q. Okay. Dry mill sweeper for about one and
2 a half months.
3 A. I believe so, yes.
4 Q. And then a tester in the test lab for
5 about a year.
6 A. I would say that was probably right.
7 Q. And then a mine dump man for a month, and
8 then you drove a euclid for three years and a month,
9 and that put you at just a little bit over four
10 years of employment up there.
11 A. That's right, yes.
12 Q. Okay. Now, when you first went to work
13 there in 1960, tell me what -- I don't know what to
14 call it, maybe orientation or whatever, where they
15 told you about your job and that sort of thing. Can
16 you tell me what that was, what that process was?
17 A. I went to the office down on Mineral
18 Avenue, their office, and I think Bill Dorrington
19 was the personnel man. Anyway, he hired me, and I
20 don't -- I don't even remember if I had to have a
21 physical, you know, before I went to work. But
22 anyway, I was dispatched up on the hill and told to
23 go to the warehouse, and --
24 Q. Bill Dorrington told you to do that; did
25 he?

1 , anyone?

2 A. No, not really.

3 Q. And I assume -- and from your testimony
4 that you've given before, it was a job that paid
5 reasonably well for the time period.

6 A. It paid a little better than J. Niels
7 Lumber Company did at that time, you know, for -- I
8 suppose you would consider me a laborer, you know.

9 Q. Okay. So you go up there. Then what that
10 next day?

11 A. I reported in to the warehouse, which was
12 run by Shorty Welch. I was issued a hard hat and, I
13 believe, a respirator. That was the only thing they
14 furnished as far as --

15 Q. You had to provide the rest of your --

16 A. Gloves, coveralls if you had them, and
17 that stuff. Oh, a hard hat. Did I mention that?

18 Q. Yeah, you mentioned hard hat.

19 A. Yeah.

20 Q. So you had a hard hat and I believe a
21 respirator.

22 A. Yes.

23 Q. From the warehouse. Then who were you
24 told to report to?

Libby [25 A. My shift foreman was Harvey Noble. Called

Libby

1 him Mike Noble.

2 Q. And you reported to him?

3 A. Yeah.

4 Q. Now, what did he tell you about the job
5 that you were going to be doing, to your --

6 A. That I would be starting on the top floor,
7 which was, I believe, the sixth or seventh floor,
8 and would be sweeping all this dust and stuff floor
9 by floor, and I had to get all those floors done
10 within an eight-hour period.

11 Q. So you would do one sweep-down in the
12 eight-hour period.

13 A. Yes.

14 Q. Okay. And you would have been the only
15 sweeper on duty during that eight-hour period?

16 A. Yes, there was one per shift.

17 Q. And how many other people do you recall
18 being in the dry mill?

19 A. Well, there were -- Like the test lab
20 personnel, they were in there probably a half hour
21 out of every hour collecting samples. There were
22 the dry mill operators, and then of course your
23 maintenance personnel that were in to repair and
24 stuff throughout the day.

25 Q. Maintenance would come and go?

Libby

- 1 A. Yeah. Maybe some days they wouldn't be
2 there at all and other days they would be there.
3 Q. As I recall, there was a top floor
4 operator, a bottom floor operator --
5 A. I believe there were two operators per
6 shift, but, you know -- Yeah, I think so.
7 Q. Yeah, I think --
8 A. I'm not sure, Gary.
9 Q. So you would end up with maybe about three
10 people that were on site all the time during the
11 day.
12 A. Yes.
13 Q. Now, would you be there all day long, Stu?
14 A. Yes.
15 Q. And that would be for the month and a half
16 that you worked there.
17 A. Uh-huh.
18 Q. Did Harvey Noble tell you anything about
19 the dust in the dry mill?
20 A. Tell me anything about it?
21 Q. Yes.
22 A. I --
23 Q. Do you remember any comments that he made
24 about the dust, whether it would be --
25 A. He didn't have to say nothing. It was

Libby

1 evident, you know.

2 Q. I understand that, but what I'm trying to
3 get to is whether he told you what it was made up
4 of, that you should wear your respirator to protect
5 against the dust?

6 A. No. No, nothing. I was told nothing.

7 Q. Okay. And so he just showed you how to do
8 it and you -- As I understand it from your earlier
9 descriptions, what you would do would be to sweep
10 everything into a hole and it would go down to the
11 next floor and --

12 A. Yeah, there were shoots that went down and
13 directly, I guess, onto the belt that went outside.

14 Q. Did the shoots go -- For instance, did
15 they shoot from the top floor, go all the way down
16 to the belt at the bottom, or did you -- did it just
17 go from floor to floor?

18 A. It must have went to the belt, you know.
19 It's hard for me to recollect, but it wouldn't make
20 sense just to dump it on the other floor and have to
21 redo it.

22 Q. Have to resweep it.

23 A. There was your normal fallout, I'm sure,
24 because they were wood floors. I'm sure there must
25 have been a shoot that went right to the waste belt.

1 A. Yeah. That was the only type of
2 ventilation there was.

Libby

3 Q. Was there visible dust in the air of the
4 bus or was it just stuff that was dirty on the
5 floor?

6 A. Well, for instance, I remember one time we
7 were coming down, and the road in them days up to
8 the mine was pretty bad, and you would hit a bump
9 and, boy, the dust would just fly, and then of
10 course it would settle back down. But normally I
11 would say you couldn't see it just floating around,
12 not like the dry mill, for instance.

13 Q. Not like the dry mill. There wasn't any
14 other place up there like the dry mill though.

15 A. No, there wasn't.

16 Q. The only place that you would have
17 dustiness that you could really visually see would
18 be as people moved around on the roadways or had
19 explosions in the mine. Would that be right?

20 A. Primarily, yeah, the road was dusty and --
21 and more so in the summer, but still dusty in the
22 winter, you know, because it would get so cold.
23 Once it gets below zero, there's no mud. It's all
24 dust, you know. It's pert' near as dusty in the
25 winter sometimes as it is in the summer, if you

Libby

1 A. My home dusty?
2 Q. Yeah. Did the dust that you had on your
3 jeans when you got home, did that go into the home
4 or into the wash?
5 A. Well, it come into the home first, and --
6 But as far as it being dusty, the wife kept it
7 pretty good, if that's what you mean. But I did
8 bring it in with me.
9 Q. And that was all kinds of dust. I mean,
10 that's from -- Whatever the makeup of the dust was
11 up at the mill, you brought it home..
12 A. Yeah, it come home on my clothes.
13 Q. Clearly from your description of how the
14 bus was, your home wasn't anywhere close to being as
15 dusty as the bus was.
16 A. It was pretty bad.
17 Q. The bus was.
18 A. In more ways than one. Yeah.
19 Q. Okay. I want to divert a little minute to
20 the health matters, and the first thing that I have
21 to ask you about is your visit to Dr. Whitehouse in
22 1992. Can you tell me what precipitated that
23 visit? How did you happen to go to him then?
24 A. Well, I had noticed I was getting shorter
25 of breath, shorter of breath over the years. I used

Libby 1. to hunt a lot and like to do stuff like that,
2 outdoor stuff, and, boy, it was getting increasingly
3 harder for me to do this.

4 And about that time I think I was talking
5 to Terry Smith, and his dad -- I can't remember his
6 name, but he had been diagnosed as having
7 asbestosis, I believe, and in talking, Boy, you
8 better get checked. So I think I went to Dr.
9 Knecht, I believe, and asked him about it, and I
10 think he referred me to Dr. Whitehouse.

11 Q. One of the things that's interesting to me
12 is that I can't find any -- I can't find any record
13 of Dr. Knecht making a note about that. Would it
14 have been in connection with some other employment,
15 do you think, or --

16 A. Boy, I don't know how it came about, you
17 know, that. What you're saying is there's no
18 records of him saying anything to me?

19 Q. Well, yeah, Dr. Knecht's file, that I have
20 at least, doesn't have either a note saying that he
21 was going to refer you to Dr. Whitehouse or in fact
22 anything else right about that time.

23 A. Well, Dr. Knecht sent me over there, and I
24 think --

25 Q. But did you go to Dr. Knecht because you

1 know, ice fish, do a lot of things. I don't do that
2 any more. I just can't do it.

Libby

3 Q. Okay. Do you have any physical
4 limitations in your view other than just the idea of
5 the shortness of breath?

6 A. Shortness of breath is a primary thing. I
7 just -- And with loss of air or breathing, you know,
8 shortness of breath, you don't function. You got no
9 strength, you know. You just want to sit down and
10 rest. So I'm limited in -- We buy our wood now
11 because I can no longer saw it and cut it. There's
12 a lot of things showing up now that I can't do.

13 Q. Do you heat with wood?

14 A. Yes, primarily. I have electricity, but
15 it's just backup. It's primarily fireplace insert
16 that I heat with.

17 Q. You've been seeing Dr. Whitehouse off and
18 on. When is the last time you saw him?

19 A. I believe in December of last year, I
20 think.

21 Q. My --

22 A. Either December or January.

23 Q. Yeah, I have December of 1998.

24 A. Right.

25 Q. That would have been last year.

Libby

1 A. Right.

2 Q. At that time he said that you had
3 increasing cough. How has that been since then?

4 A. I cough a lot in comparison any more, and
5 the wife noticed that too.

6 Q. What is it? Is it a dry cough or --

7 A. Yeah. I never cough up much phlegm or
8 anything. Just a dry, hacking, tickling cough.

9 Q. Are there times you do it more than
10 others?

11 A. Yeah, I cough a lot I guess when I'm
12 sleeping at night.

13 Q. Sleeping at night. Okay.

14 Whitehouse in his last report says, and
15 this is December of last year, We had a discussion
16 about prognosis and long-term outlook for his
17 disease.

18 What did you discuss with him in that
19 regard?

20 A. I think that I had gotten considerably
21 worse since the prior examination, which probably
22 would have been a year or six months prior to that.
23 He had noted a significant change.

24 Q. Anything else that he said about
25 prognosis, long-term outlook?

Arrowood
obj:
H;F

Libby

1 A. Wasn't good.

2 Q. And --

3 A. In comparison to what it had been.

4 Q. And so did he tell you that it was going

5 to continue to progress or that it was going to --

6 that it could stop or it could --

7 A. No. He assumed that -- Or this is what he

8 told me, I think, that it would continue to get

9 worse and worse and worse. He couldn't give me a

10 time frame as to, say, when it's going to kill you,

11 you know. Every individual, as I understand it, is

12 different. But he said just from his observations

13 and stuff, it had gotten quite a bit worse quite

14 rapidly. I went along it seemed like kind of on a

15 plateau for awhile, and then in that last one it

16 really got worse.

17 Q. Did he indicate that he felt that any of

18 your problems still were related to your problems

19 smoking back in the earlier days?

20 A. I think he told me that there was some

21 signs of emphysema also, along with the asbestosis.

22 Q. Yeah. Now, you went and -- Did Dr. Smith

23 do an examination of you?

24 A. Yes.

25 Q. I'm trying to remember. I think I have it